

Introduced by Senator Hill

February 21, 2013

An act to amend, repeal, and add Section 11100 of, and to add and repeal Section 11100.02 of, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 506, as introduced, Hill. Ephedrine: retail sale.

(1) Existing law classifies controlled substances into 5 schedules, with the most restrictive limitations placed on controlled substances classified in Schedule I, and the least restrictive limitations placed on controlled substances classified in Schedule V. A controlled substance in any of the schedules may be possessed or dispensed only upon a lawful prescription, as specified. Existing law does not classify ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine within any of these 5 schedules, but provides that it is a crime, punishable as specified, for a person in this state who engages in specified transactions involving those drugs to fail to submit a report to the Department of Justice of all of those transactions, or to fail to submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice, as specified. Existing law prohibits the sale of more than 3 packages or 9 grams of a nonprescription product containing ephedrine or the other drugs, as specified.

This bill would instead provide that it is a misdemeanor, punishable as specified, for a retail distributor, except pursuant to a valid prescription from a licensed practitioner with prescriptive authority, to sell or distribute to a person specified amounts of nonprescription products containing ephedrine, pseudoephedrine, norpseudoephedrine,

or phenylpropanolamine within specified time limits, to sell or distribute any of those substances to a person whose information has generated an alert, or, except under specified conditions, to sell or distribute to a purchaser a nonprescription product containing any amount of those substances. The bill would contain provisions requiring the secure storage and monitoring of products containing any amount of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, as specified.

The bill would require retail distributors to transmit, on and after July 1, 2014, sale information to the National Precursor Log Exchange (NPLEx) for purposes of determining whether the sale would violate these provisions. The bill would require the Department of Justice to enter into a memorandum of understanding with the National Association of Drug Diversion Investigators regarding the transaction records in NPLEx, as specified. The bill would provide that the information in the system may not be used for any purpose other than to meet the requirements of, or comply with, this act or a certain federal act, as specified. The bill would require that the system be available to the department and state law enforcement at no charge and would prohibit the Department of Justice or any other state agency from bearing any cost for the development, installation, or maintenance of the system. The bill would specify legislative findings and intent. The bill's provisions would remain in effect only until January 1, 2019. By creating a new crime, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11100 of the Health and Safety Code is
- 2 amended to read:
- 3 11100. (a) Any manufacturer, wholesaler, retailer, or other
- 4 person or entity in this state that sells, transfers, or otherwise
- 5 furnishes any of the following substances to any person or entity

1 in this state or any other state shall submit a report to the
2 Department of Justice of all of those transactions:

- 3 (1) Phenyl-2-propanone.
- 4 (2) Methylamine.
- 5 (3) Ethylamine.
- 6 (4) D-lysergic acid.
- 7 (5) Ergotamine tartrate.
- 8 (6) Diethyl malonate.
- 9 (7) Malonic acid.
- 10 (8) Ethyl malonate.
- 11 (9) Barbituric acid.
- 12 (10) Piperidine.
- 13 (11) N-acetylanthranilic acid.
- 14 (12) Pyrrolidine.
- 15 (13) Phenylacetic acid.
- 16 (14) Anthranilic acid.
- 17 (15) Morpholine.
- 18 (16) Ephedrine.
- 19 (17) Pseudoephedrine.
- 20 (18) Norpseudoephedrine.
- 21 (19) Phenylpropanolamine.
- 22 (20) Propionic anhydride.
- 23 (21) Isosafrole.
- 24 (22) Safrole.
- 25 (23) Piperonal.
- 26 (24) Thionyl chloride.
- 27 (25) Benzyl cyanide.
- 28 (26) Ergonovine maleate.
- 29 (27) N-methylephedrine.
- 30 (28) N-ethylephedrine.
- 31 (29) N-methylpseudoephedrine.
- 32 (30) N-ethylpseudoephedrine.
- 33 (31) Chloroephedrine.
- 34 (32) Chloropseudoephedrine.
- 35 (33) Hydriodic acid.
- 36 (34) Gamma-butyrolactone, including butyrolactone;
37 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
38 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
39 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;

1 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
2 with Chemical Abstract Service number (96-48-0).

3 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
4 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
5 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
6 1,4-diol with Chemical Abstract Service number (110-63-4).

7 (36) Red phosphorus, including white phosphorus,
8 hypophosphorous acid and its salts, ammonium hypophosphite,
9 calcium hypophosphite, iron hypophosphite, potassium
10 hypophosphite, manganese hypophosphite, magnesium
11 hypophosphite, sodium hypophosphite, and phosphorous acid and
12 its salts.

13 (37) Iodine or tincture of iodine.

14 (38) Any of the substances listed by the Department of Justice
15 in regulations promulgated pursuant to subdivision (b).

16 (b) The Department of Justice may adopt rules and regulations
17 in accordance with Chapter 3.5 (commencing with Section 11340)
18 of Part 1 of Division 3 of Title 2 of the Government Code that add
19 substances to subdivision (a) if the substance is a precursor to a
20 controlled substance and delete substances from subdivision (a).
21 However, no regulation adding or deleting a substance shall have
22 any effect beyond March 1 of the year following the calendar year
23 during which the regulation was adopted.

24 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
25 person or entity in this state, prior to selling, transferring, or
26 otherwise furnishing any substance specified in subdivision (a) to
27 any person or business entity in this state or any other state, shall
28 require (i) a letter of authorization from that person or business
29 entity that includes the currently valid business license number or
30 federal Drug Enforcement Administration (DEA) registration
31 number, the address of the business, and a full description of how
32 the substance is to be used, and (ii) proper identification from the
33 purchaser. The manufacturer, wholesaler, retailer, or other person
34 or entity in this state shall retain this information in a readily
35 available manner for three years. The requirement for a full
36 description of how the substance is to be used does not require the
37 person or business entity to reveal their chemical processes that
38 are typically considered trade secrets and proprietary information.

39 (B) For the purposes of this paragraph, "proper identification"
40 for in-state or out-of-state purchasers includes two or more of the

1 following: federal tax identification number; seller's permit
2 identification number; city or county business license number;
3 license issued by the State Department of Public Health;
4 registration number issued by the federal Drug Enforcement
5 Administration; precursor business permit number issued by the
6 Department of Justice; driver's license; or other identification
7 issued by a state.

8 (2) (A) ~~Any~~A manufacturer, wholesaler, retailer, or other
9 person or entity in this state that exports a substance specified in
10 subdivision (a) to ~~any~~ a person or business entity located in a
11 foreign country shall, on or before the date of exportation, submit
12 to the Department of Justice a notification of that ~~transaction,~~
13 ~~which~~ transaction. The notification shall include the name and
14 quantity of the substance to be exported and the name, address,
15 and, if assigned by the foreign country or subdivision thereof,
16 business identification number of the person or business entity
17 located in a foreign country importing the substance.

18 (B) The department may authorize the submission of the
19 notification on a monthly basis with respect to repeated, regular
20 transactions between an exporter and an importer involving a
21 substance specified in subdivision (a), if the department determines
22 that a pattern of regular supply of the substance exists between the
23 exporter and importer and that the importer has established a record
24 of utilization of the substance for lawful purposes.

25 (d) (1) ~~Any~~A manufacturer, wholesaler, retailer, or other person
26 or entity in this state that sells, transfers, or otherwise furnishes a
27 substance specified in subdivision (a) to a person or business entity
28 in this state or any other state shall, not less than 21 days prior to
29 delivery of the substance, submit a report of the transaction, which
30 includes the identification information specified in subdivision
31 (c), to the Department of Justice. The Department of Justice may
32 authorize the submission of the reports on a monthly basis with
33 respect to repeated, regular transactions between the furnisher and
34 the recipient involving the substance or substances if the
35 Department of Justice determines that a pattern of regular supply
36 of the substance or substances exists between the manufacturer,
37 wholesaler, retailer, or other person or entity that sells, transfers,
38 or otherwise furnishes the substance or substances and the recipient
39 of the substance or substances, and the recipient has established a

1 record of utilization of the substance or substances for lawful
2 purposes.

3 (2) The person selling, transferring, or otherwise furnishing ~~any~~
4 a substance specified in subdivision (a) shall affix his or her
5 signature or otherwise identify himself or herself as a witness to
6 the identification of the purchaser or purchasing individual, and
7 shall, if a common carrier is used, maintain a manifest of the
8 delivery to the purchaser for three years.

9 (e) This section shall not apply to any of the following:

10 (1) ~~Any~~ A pharmacist or other authorized person who sells or
11 furnishes a substance upon the prescription of a physician, dentist,
12 podiatrist, or veterinarian.

13 (2) ~~Any~~ A physician, dentist, podiatrist, or veterinarian who
14 administers or furnishes a substance to his or her patients.

15 (3) ~~Any~~ A manufacturer or wholesaler licensed by the California
16 State Board of Pharmacy that sells, transfers, or otherwise furnishes
17 a substance to a licensed pharmacy, physician, dentist, podiatrist,
18 or veterinarian, or a retail distributor ~~as defined in subdivision (h)~~,
19 provided that the manufacturer or wholesaler submits records of
20 any suspicious sales or transfers as determined by the Department
21 of Justice.

22 (4) ~~Any~~ An analytical research facility that is registered with
23 the federal Drug Enforcement Administration of the United States
24 Department of Justice.

25 (5) A state-licensed health care facility that administers or
26 furnishes a substance to its patients.

27 (6) (A) ~~Any~~ The sale, transfer, furnishing, or receipt of ~~any~~ a
28 product that contains ephedrine, pseudoephedrine,
29 norpseudoephedrine, or phenylpropanolamine and ~~which~~ that is
30 lawfully sold, transferred, or furnished over the counter without a
31 prescription pursuant to the ~~federal~~ *Federal* Food, Drug, and
32 Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted
33 thereunder. However, this section shall apply to preparations in
34 solid or liquid dosage form, except pediatric liquid forms, as
35 defined, containing ephedrine, pseudoephedrine,
36 norpseudoephedrine, or phenylpropanolamine where the individual
37 transaction involves more than three packages or nine grams of
38 ephedrine, pseudoephedrine, norpseudoephedrine, or
39 phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to ~~subdivision (d) or (e) of Section 814~~ 814(d) of Title 21 of the United States Code as an exempt product.

(7) The sale, transfer, furnishing, or receipt of ~~any a~~ betadine or povidone solution with an iodine content not exceeding 1 percent in containers of eight ounces or less, or ~~any a~~ tincture of iodine not exceeding 2 percent in containers of one ounce or less, that is sold over the counter.

(8) ~~Any~~ The transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) ~~Any~~ A person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for ~~any a~~ manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

~~(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine,~~

~~pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.); or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.~~

~~(4)~~

~~(3) (A) A first violation of this subdivision is a misdemeanor.~~

~~(B) Any~~ A person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

~~(h) For the purposes of this article, the following terms have the following meanings:~~

~~(1) “Drug store” is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(2) “General merchandise store” is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(3) “Grocery store” is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(4) “Pediatric liquid” means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.~~

1 ~~(5) “Retail distributor” means a grocery store, general~~
2 ~~merchandise store, drugstore, or other related entity, the activities~~
3 ~~of which, as a distributor of ephedrine, pseudoephedrine,~~
4 ~~norpseudoephedrine, or phenylpropanolamine products, are limited~~
5 ~~exclusively to the sale of ephedrine, pseudoephedrine,~~
6 ~~norpseudoephedrine, or phenylpropanolamine products for personal~~
7 ~~use both in number of sales and volume of sales, either directly to~~
8 ~~walk-in customers or in face-to-face transactions by direct sales.~~
9 ~~“Retail distributor” includes an entity that makes a direct sale, but~~
10 ~~does not include the parent company of that entity if the company~~
11 ~~is not involved in direct sales regulated by this article.~~

12 ~~(6) “Sale for personal use” means the sale in a single transaction~~
13 ~~to an individual customer for a legitimate medical use of a product~~
14 ~~containing ephedrine, pseudoephedrine, norpseudoephedrine, or~~
15 ~~phenylpropanolamine in dosages at or below that specified in~~
16 ~~paragraph (3) of subdivision (g). “Sale for personal use” also~~
17 ~~includes the sale of those products to employers to be dispensed~~
18 ~~to employees from first-aid kits or medicine chests.~~

19 ~~(i) It is the intent of the Legislature that this section shall~~
20 ~~preempt all local ordinances or regulations governing the sale by~~
21 ~~a retail distributor of over-the-counter products containing~~
22 ~~ephedrine, pseudoephedrine, norpseudoephedrine, or~~
23 ~~phenylpropanolamine.~~

24 ~~(h) This section shall remain in effect only until January 1, 2019,~~
25 ~~and as of that date is repealed, unless a later enacted statute, that~~
26 ~~is enacted before January 1, 2019, deletes or extends that date.~~

27 SEC. 2. Section 11100 is added to the Health and Safety Code,
28 to read:

29 11100. (a) Any manufacturer, wholesaler, retailer, or other
30 person or entity in this state that sells, transfers, or otherwise
31 furnishes any of the following substances to any person or entity
32 in this state or any other state shall submit a report to the
33 Department of Justice of all of those transactions:

- 34 (1) Phenyl-2-propanone.
- 35 (2) Methylamine.
- 36 (3) Ethylamine.
- 37 (4) D-lysergic acid.
- 38 (5) Ergotamine tartrate.
- 39 (6) Diethyl malonate.
- 40 (7) Malonic acid.

- 1 (8) Ethyl malonate.
- 2 (9) Barbituric acid.
- 3 (10) Piperidine.
- 4 (11) N-acetylanthranilic acid.
- 5 (12) Pyrrolidine.
- 6 (13) Phenylacetic acid.
- 7 (14) Anthranilic acid.
- 8 (15) Morpholine.
- 9 (16) Ephedrine.
- 10 (17) Pseudoephedrine.
- 11 (18) Norpseudoephedrine.
- 12 (19) Phenylpropanolamine.
- 13 (20) Propionic anhydride.
- 14 (21) Isosafrole.
- 15 (22) Safrole.
- 16 (23) Piperonal.
- 17 (24) Thionyl chloride.
- 18 (25) Benzyl cyanide.
- 19 (26) Ergonovine maleate.
- 20 (27) N-methylephedrine.
- 21 (28) N-ethylephedrine.
- 22 (29) N-methylpseudoephedrine.
- 23 (30) N-ethylpseudoephedrine.
- 24 (31) Chloroephedrine.
- 25 (32) Chloropseudoephedrine.
- 26 (33) Hydriodic acid.
- 27 (34) Gamma-butyrolactone, including butyrolactone;
- 28 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
- 29 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
- 30 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
- 31 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
- 32 with Chemical Abstract Service number (96-48-0).
- 33 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
- 34 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
- 35 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
- 36 1,4-diol with Chemical Abstract Service number (110-63-4).
- 37 (36) Red phosphorus, including white phosphorus,
- 38 hypophosphorous acid and its salts, ammonium hypophosphite,
- 39 calcium hypophosphite, iron hypophosphite, potassium
- 40 hypophosphite, manganese hypophosphite, magnesium

1 hypophosphite, sodium hypophosphite, and phosphorous acid and
2 its salts.

3 (37) Iodine or tincture of iodine.

4 (38) Any of the substances listed by the Department of Justice
5 in regulations promulgated pursuant to subdivision (b).

6 (b) The Department of Justice may adopt rules and regulations
7 in accordance with Chapter 3.5 (commencing with Section 11340)
8 of Part 1 of Division 3 of Title 2 of the Government Code that add
9 substances to subdivision (a) if the substance is a precursor to a
10 controlled substance and delete substances from subdivision (a).
11 However, no regulation adding or deleting a substance shall have
12 any effect beyond March 1 of the year following the calendar year
13 during which the regulation was adopted.

14 (c) (1) (A) A manufacturer, wholesaler, retailer, or other person
15 or entity in this state, prior to selling, transferring, or otherwise
16 furnishing a substance specified in subdivision (a) to a person or
17 business entity in this state or any other state, shall require (i) a
18 letter of authorization from that person or business entity that
19 includes the currently valid business license number or federal
20 Drug Enforcement Administration (DEA) registration number, the
21 address of the business, and a full description of how the substance
22 is to be used, and (ii) proper identification from the purchaser. The
23 manufacturer, wholesaler, retailer, or other person or entity in this
24 state shall retain this information in a readily available manner for
25 three years. The requirement for a full description of how the
26 substance is to be used does not require the person or business
27 entity to reveal chemical processes that are typically considered
28 trade secrets and proprietary information.

29 (B) For the purposes of this paragraph, “proper identification”
30 for in-state or out-of-state purchasers includes two or more of the
31 following: federal tax identification number; seller’s permit
32 identification number; city or county business license number;
33 license issued by the State Department of Public Health;
34 registration number issued by the federal Drug Enforcement
35 Administration; precursor business permit number issued by the
36 Bureau of Narcotic Enforcement of the Department of Justice;
37 driver’s license; or other identification issued by a state.

38 (2) (A) A manufacturer, wholesaler, retailer, or other person
39 or entity in this state that exports a substance specified in
40 subdivision (a) to a person or business entity located in a foreign

1 country shall, on or before the date of exportation, submit to the
2 Department of Justice a notification of that transaction. The
3 notification shall include the name and quantity of the substance
4 to be exported and the name, address, and, if assigned by the
5 foreign country or subdivision thereof, business identification
6 number of the person or business entity located in a foreign country
7 importing the substance.

8 (B) The department may authorize the submission of the
9 notification on a monthly basis with respect to repeated, regular
10 transactions between an exporter and an importer involving a
11 substance specified in subdivision (a), if the department determines
12 that a pattern of regular supply of the substance exists between the
13 exporter and importer and that the importer has established a record
14 of utilization of the substance for lawful purposes.

15 (d) (1) A manufacturer, wholesaler, retailer, or other person or
16 entity in this state that sells, transfers, or otherwise furnishes a
17 substance specified in subdivision (a) to a person or business entity
18 in this state or any other state shall, not less than 21 days prior to
19 delivery of the substance, submit a report of the transaction, which
20 includes the identification information specified in subdivision
21 (c), to the Department of Justice. The Department of Justice may
22 authorize the submission of the reports on a monthly basis with
23 respect to repeated, regular transactions between the furnisher and
24 the recipient involving the substance or substances if the
25 Department of Justice determines that a pattern of regular supply
26 of the substance or substances exists between the manufacturer,
27 wholesaler, retailer, or other person or entity that sells, transfers,
28 or otherwise furnishes the substance or substances and the recipient
29 of the substance or substances, and the recipient has established a
30 record of utilization of the substance or substances for lawful
31 purposes.

32 (2) The person selling, transferring, or otherwise furnishing a
33 substance specified in subdivision (a) shall affix his or her signature
34 or otherwise identify himself or herself as a witness to the
35 identification of the purchaser or purchasing individual, and shall,
36 if a common carrier is used, maintain a manifest of the delivery
37 to the purchaser for three years.

38 (e) This section shall not apply to any of the following:

1 (1) A pharmacist or other authorized person who sells or
2 furnishes a substance upon the prescription of a physician, dentist,
3 podiatrist, or veterinarian.

4 (2) A physician, dentist, podiatrist, or veterinarian who
5 administers or furnishes a substance to his or her patients.

6 (3) A manufacturer or wholesaler licensed by the California
7 State Board of Pharmacy that sells, transfers, or otherwise furnishes
8 a substance to a licensed pharmacy, physician, dentist, podiatrist,
9 or veterinarian, or a retail distributor, provided that the
10 manufacturer or wholesaler submits records of any suspicious sales
11 or transfers as determined by the Department of Justice.

12 (4) An analytical research facility that is registered with the
13 federal Drug Enforcement Administration of the United States
14 Department of Justice.

15 (5) A state-licensed health care facility that administers or
16 furnishes a substance to its patients.

17 (6) (A) The sale, transfer, furnishing, or receipt of a product
18 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
19 or phenylpropanolamine and that is lawfully sold, transferred, or
20 furnished over the counter without a prescription pursuant to the
21 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.)
22 or regulations adopted thereunder. However, this section shall
23 apply to preparations in solid or liquid dosage form, except
24 pediatric liquid forms, as defined, containing ephedrine,
25 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine
26 where the individual transaction involves more than three packages
27 or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,
28 or phenylpropanolamine.

29 (B) An ephedrine, pseudoephedrine, norpseudoephedrine, or
30 phenylpropanolamine product subsequently removed from
31 exemption pursuant to Section 814 of Title 21 of the United States
32 Code shall similarly no longer be exempt from state reporting or
33 permitting requirements, unless otherwise reinstated pursuant to
34 Section 814(d) of Title 21 of the United States Code as an exempt
35 product.

36 (7) The sale, transfer, furnishing, or receipt of a betadine or
37 povidone solution with an iodine content not exceeding 1 percent
38 in containers of eight ounces or less, or a tincture of iodine not
39 exceeding 2 percent in containers of one ounce or less, that is sold
40 over the counter.

1 (8) Transfer of a substance specified in subdivision (a) for
2 purposes of lawful disposal as waste.

3 (f) (1) A person specified in subdivision (a) or (d) who does
4 not submit a report as required by that subdivision or who
5 knowingly submits a report with false or fictitious information
6 shall be punished by imprisonment in a county jail not exceeding
7 six months, by a fine not exceeding five thousand dollars (\$5,000),
8 or by both the fine and imprisonment.

9 (2) A person specified in subdivision (a) or (d) who has
10 previously been convicted of a violation of paragraph (1) shall,
11 upon a subsequent conviction thereof, be punished by
12 imprisonment pursuant to subdivision (h) of Section 1170 of the
13 Penal Code, or by imprisonment in a county jail not exceeding one
14 year, by a fine not exceeding one hundred thousand dollars
15 (\$100,000), or by both the fine and imprisonment.

16 (g) (1) Except as otherwise provided in subparagraph (A) of
17 paragraph (6) of subdivision (e), it is unlawful for a manufacturer,
18 wholesaler, retailer, or other person to sell, transfer, or otherwise
19 furnish a substance specified in subdivision (a) to a person under
20 18 years of age.

21 (2) Except as otherwise provided in subparagraph (A) of
22 paragraph (6) of subdivision (e), it is unlawful for a person under
23 18 years of age to possess a substance specified in subdivision (a).

24 (3) Notwithstanding any other law, it is unlawful for a retail
25 distributor to (A) sell in a single transaction more than three
26 packages of a product that he or she knows to contain ephedrine,
27 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
28 or (B) knowingly sell more than nine grams of ephedrine,
29 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
30 other than pediatric liquids as defined. Except as otherwise
31 provided in this section, the three package per transaction limitation
32 or nine gram per transaction limitation imposed by this paragraph
33 shall apply to any product that is lawfully sold, transferred, or
34 furnished over the counter without a prescription pursuant to the
35 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
36 seq.), or regulations adopted thereunder, unless exempted from
37 the requirements of the federal Controlled Substances Act (21
38 U.S.C. Sec. 801 et seq.) by the federal Drug Enforcement
39 Administration pursuant to Section 814 of Title 21 of the United
40 States Code.

1 (4) (A) A first violation of this subdivision is a misdemeanor.

2 (B) A person who has previously been convicted of a violation
3 of this subdivision shall, upon a subsequent conviction thereof, be
4 punished by imprisonment in a county jail not exceeding one year,
5 by a fine not exceeding ten thousand dollars (\$10,000), or by both
6 the fine and imprisonment.

7 (h) For the purposes of this article, the following terms have
8 the following meanings:

9 (1) “Drug store” is an entity described in Code 5912 of the
10 Standard Industrial Classification (SIC) Manual published by the
11 United States Office of Management and Budget, 1987 edition.

12 (2) “General merchandise store” is an entity described in Codes
13 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial
14 Classification (SIC) Manual published by the United States Office
15 of Management and Budget, 1987 edition.

16 (3) “Grocery store” is an entity described in Code 5411 of the
17 Standard Industrial Classification (SIC) Manual published by the
18 United States Office of Management and Budget, 1987 edition.

19 (4) “Pediatric liquid” means a nonencapsulated liquid whose
20 unit measure according to product labeling is stated in milligrams,
21 ounces, or other similar measure. In no instance shall the dosage
22 units exceed 15 milligrams of phenylpropanolamine or
23 pseudoephedrine per five milliliters of liquid product, except for
24 liquid products primarily intended for administration to children
25 under two years of age for which the recommended dosage unit
26 does not exceed two milliliters and the total package content does
27 not exceed one fluid ounce.

28 (5) “Retail distributor” means a grocery store, general
29 merchandise store, drugstore, or other related entity, the activities
30 of which, as a distributor of ephedrine, pseudoephedrine,
31 norpseudoephedrine, or phenylpropanolamine products, are limited
32 exclusively to the sale of ephedrine, pseudoephedrine,
33 norpseudoephedrine, or phenylpropanolamine products for personal
34 use both in number of sales and volume of sales, either directly to
35 walk-in customers or in face-to-face transactions by direct sales.
36 “Retail distributor” includes an entity that makes a direct sale, but
37 does not include the parent company of that entity if the company
38 is not involved in direct sales regulated by this article.

39 (6) “Sale for personal use” means the sale, in a single
40 transaction, to an individual customer for a legitimate medical use

1 of a product containing ephedrine, pseudoephedrine,
2 norpseudoephedrine, or phenylpropanolamine in dosages at or
3 below that specified in paragraph (3) of subdivision (g). “Sale for
4 personal use” also includes the sale of those products to employers
5 to be dispensed to employees from first aid kits or medicine chests.

6 (i) It is the intent of the Legislature that this section shall
7 preempt all local ordinances or regulations governing the sale by
8 a retail distributor of over-the-counter products containing
9 ephedrine, pseudoephedrine, norpseudoephedrine, or
10 phenylpropanolamine.

11 (j) This section shall become operative on January 1, 2019.

12 SEC. 3. Section 11100.02 is added to the Health and Safety
13 Code, to read:

14 11100.02. (a) Notwithstanding any other law, it is unlawful
15 for a retail distributor to knowingly do any of the following, except
16 pursuant to a valid prescription from a licensed practitioner with
17 prescriptive authority:

18 (1) To sell or distribute to the same purchaser within a 30-day
19 period more than 9 grams, or within a day more than 3.6 grams,
20 of ephedrine base, pseudoephedrine base, norpseudoephedrine
21 base, or phenylpropanolamine base contained in a product that is
22 lawfully sold, transferred, or furnished over the counter without a
23 prescription pursuant to the Federal Food, Drug, and Cosmetic
24 Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder,
25 unless exempted from the requirements of the federal Controlled
26 Substances Act (21 U.S.C. Sec. 801 et seq.) by the federal Drug
27 Enforcement Administration pursuant to Section 814 of Title 21
28 of the United States Code.

29 (2) To sell or distribute ephedrine, pseudoephedrine,
30 norpseudoephedrine, or phenylpropanolamine to a person whose
31 information has generated an alert as described in paragraph (3)
32 of subdivision (d) regarding that sale.

33 (3) To sell or distribute to a purchaser a nonprescription product
34 containing any amount of ephedrine, pseudoephedrine,
35 norpseudoephedrine, or phenylpropanolamine, except under the
36 following conditions:

37 (A) The purchaser shall produce valid government-issued photo
38 identification.

39 (B) The purchaser shall sign a written or electronic log showing
40 all of the following:

- 1 (i) The date and time of the transaction.
- 2 (ii) The identification number presented.
- 3 (iii) The agency issuing the identification and the type of
- 4 identification issued.
- 5 (iv) The name, date of birth, and address of the purchaser.
- 6 (v) The amount of ephedrine base, pseudoephedrine base,
- 7 norpseudoephedrine base, or phenylpropanolamine base contained
- 8 in the material, compound, mixture, or preparation sold.
- 9 (b) The retail distributor shall store any product containing any
- 10 amount of ephedrine, pseudoephedrine, norpseudoephedrine, or
- 11 phenylpropanolamine either behind the counter or in a locked
- 12 cabinet so that the customer does not have access to the product.
- 13 (c) (1) To facilitate the monitoring of the sales of
- 14 nonprescription products containing ephedrine, pseudoephedrine,
- 15 norpseudoephedrine, or phenylpropanolamine, the retail distributor
- 16 shall record all of the following information at the point of sale
- 17 regarding the proposed transaction for the purpose of complying
- 18 with this section or the federal Combat Methamphetamine
- 19 Epidemic Act of 2005, or any regulation adopted pursuant to this
- 20 section or that act, and for no other purpose:
- 21 (A) The date and time of the transaction.
- 22 (B) The identification number of the purchaser, issuing agency
- 23 of the identification, and the type of identification used.
- 24 (C) The name, date of birth, and address of the purchaser
- 25 verified through a photo identification of the purchaser.
- 26 (D) The name, quantity of packages, and total gram weight of
- 27 ephedrine base, pseudoephedrine base, norpseudoephedrine base,
- 28 or phenylpropanolamine base contained in a product or products
- 29 purchased, received, or otherwise acquired.
- 30 (E) The name or initials of the person making the sale.
- 31 (2) On and after July 1, 2014, the retail distributor shall transmit
- 32 the information immediately to the National Precursor Log
- 33 Exchange (NPLEx) administered by the National Association of
- 34 Drug Diversion Investigators (NADDI) for purposes of determining
- 35 whether the proposed sale would violate this section and therefore
- 36 may not proceed, provided that the NPLEx system is available to
- 37 retailers in the state without a charge for accessing the system. The
- 38 transaction information shall not be accessed, stored, or used by
- 39 the retail distributor or law enforcement for any purpose other than
- 40 to meet the requirements set forth in this section or to comply with

1 the provisions of the federal Combat Methamphetamine Epidemic
2 Act of 2005, or any regulation adopted pursuant to this section or
3 that act. The retail distributor shall not maintain a separate copy
4 of the transaction information and shall not have direct access to
5 individual information or sales records entered into the NPLeX
6 system, except as required by the federal Combat
7 Methamphetamine Epidemic Act of 2005.

8 (3) (A) A retail distributor shall provide notice electronically,
9 in writing, or by signage to purchasers at the time of purchase that
10 the information collected pursuant to the federal Combat
11 Methamphetamine Epidemic Act of 2005 and this section shall be
12 entered into a single database as specified in paragraph (2) and
13 provided to law enforcement for purposes of determining the
14 legality of a proposed sale.

15 (B) The Legislature finds that it is necessary for probable cause
16 to be demonstrated to trigger an investigation in connection with
17 an individual whose requested purchase is denied by the system a
18 single time.

19 (C) Access by law enforcement to the data contained in the
20 system from a location other than the retailer shall be limited to
21 the records of an individual whose attempted purchase has been
22 denied by the system.

23 (4) This subdivision shall not be construed to require a retail
24 distributor to maintain state-required records relating to the sale
25 of products containing ephedrine, pseudoephedrine,
26 norpseudoephedrine, or phenylpropanolamine in a separate location
27 or log from records required by federal law to be kept with respect
28 to those products.

29 (5) The recording requirements specified in this subdivision
30 shall not apply to the sale of a single package containing not more
31 than 60 milligrams of pseudoephedrine, consistent with the federal
32 Combat Methamphetamine Epidemic Act of 2005.

33 (6) If a retail distributor experiences mechanical or electronic
34 failure of the system and is unable to comply with the recording
35 requirements of this subdivision, the retail distributor shall maintain
36 the required records in a written log or an alternative electronic
37 recordkeeping mechanism until the retail distributor is able to
38 comply with the recording requirements of this subdivision. Written
39 logs shall be maintained only for the purpose of compliance with
40 this subdivision.

1 (d) (1) Provided that the department executes a memorandum
2 of understanding (MOU) with NADDI governing access, pursuant
3 to this subdivision, NADDI shall forward California transaction
4 records in NPLeX to the Department of Justice weekly and provide
5 real-time access to NPLeX information through the NPLeX online
6 portal to law enforcement in the state as authorized by the
7 department. The MOU shall constitute an enforceable contract.

8 (2) Access to the system shall be available at no charge to the
9 department and law enforcement in this state as authorized pursuant
10 to paragraph (1).

11 (3) The system shall allow retail distributors of products
12 containing ephedrine, pseudoephedrine, norpseudoephedrine, or
13 phenylpropanolamine to enter into the database the information
14 specified in subdivision (c) regarding the proposed sale of those
15 products.

16 (4) The system shall be capable of providing the retail distributor
17 with an immediate real-time alert any time a provision of this
18 section is being violated by a proposed sale.

19 (5) Neither the department nor any state agency shall bear any
20 cost for the development, installation, or maintenance of the
21 system.

22 (6) The MOU shall state that no party to the MOU nor any entity
23 under contract to provide the electronic authorization and
24 monitoring system shall be authorized to use the information
25 contained in the system for any purpose other than those set forth
26 in this section, the federal Combat Methamphetamine Epidemic
27 Act of 2005, or any regulation adopted pursuant to this section or
28 that act. However, the system operator shall be authorized to
29 analyze the information for the sole purpose of assessing and
30 improving the performance and efficacy of the system. In addition,
31 the MOU shall require that a retail distributor's access to the
32 electronic authorization and monitoring system's database is
33 limited solely to records of sales transactions made by that retail
34 distributor, which access shall be solely for purposes of complying
35 with the federal Combat Methamphetamine Epidemic Act of 2005
36 or this section, or to respond to a duly authorized law enforcement
37 request or court order for information collected under that act or
38 this section.

39 (7) The system's security program shall comply with the security
40 standards for the Criminal Justice Information System of the

1 Federal Bureau of Investigation and may be audited once a year
2 by the department.

3 (8) The use of the system by a retail distributor or vendor of the
4 NPLeX system shall be subject to Section 56.101 of the Civil Code.
5 A retail distributor or a vendor of the NPLeX system holding the
6 NPLeX data shall not maintain any records collected under this
7 system for longer than two years, or as otherwise required by the
8 federal Combat Methamphetamine Epidemic Act of 2005 and shall
9 be destroyed pursuant to Section 1798.81 of the Civil Code.

10 (9) Law enforcement access to the system shall be recorded by
11 means of a unique access code for each individual accessing the
12 system. Each user's history shall be maintained and may be audited
13 by the department.

14 (10) The department may submit recommendations to NADDI
15 regarding system changes to assist in identifying false identification
16 cards.

17 (11) Disputes relating to compliance with this section arising
18 against a vendor of the NPLeX system shall be subject to a court
19 of competent jurisdiction in California and shall be governed by
20 California law.

21 (e) The State Board of Equalization shall notify all retailers
22 about the requirement to submit transactions to NPLeX no later
23 than April 1, 2014.

24 (f) This section shall not apply to a health care practitioner with
25 prescriptive authority who is currently licensed in this state.

26 (g) (1) A first violation of this section is a misdemeanor.

27 (2) A person who has previously been convicted of a violation
28 of this section shall, upon a subsequent conviction thereof, be
29 punished by imprisonment in a county jail not exceeding one year,
30 by a fine not exceeding ten thousand dollars (\$10,000), or by both
31 the fine and imprisonment.

32 (h) For the purposes of this section, the following terms have
33 the following meanings:

34 (1) "Department" means the Department of Justice.

35 (2) "Drug store" is an entity described in Code 5912 of the
36 Standard Industrial Classification (SIC) Manual published by the
37 United States Office of Management and Budget, 1987 edition.

38 (3) "General merchandise store" is an entity described in Codes
39 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial

1 Classification (SIC) Manual published by the United States Office
2 of Management and Budget, 1987 edition.

3 (4) “Grocery store” is an entity described in Code 5411 of the
4 Standard Industrial Classification (SIC) Manual published by the
5 United States Office of Management and Budget, 1987 edition.

6 (5) “Retail distributor” means a grocery store, general
7 merchandise store, drugstore, or other related entity, the activities
8 of which, as a distributor of ephedrine, pseudoephedrine,
9 norpseudoephedrine, or phenylpropanolamine products, are limited
10 exclusively to the sale of ephedrine, pseudoephedrine,
11 norpseudoephedrine, or phenylpropanolamine products for personal
12 use both in number of sales and volume of sales, either directly to
13 walk-in customers or in face-to-face transactions by direct sales.
14 “Retail distributor” includes an entity that makes a direct sale, but
15 does not include the parent company of that entity if the company
16 is not involved in direct sales regulated by this article.

17 (6) “Sale for personal use” means the sale in a single transaction
18 to an individual customer for a legitimate medical use of a product
19 containing ephedrine, pseudoephedrine, norpseudoephedrine, or
20 phenylpropanolamine in amounts at or below that specified in
21 subdivision (a). “Sale for personal use” also includes the sale of
22 those products to employers to be dispensed to employees from
23 first aid kits or medicine chests.

24 (i) It is the intent of the Legislature that this section shall
25 preempt all local ordinances or regulations governing the sale by
26 a retail distributor of over-the-counter products containing
27 ephedrine, pseudoephedrine, norpseudoephedrine, or
28 phenylpropanolamine.

29 (j) This section shall remain in effect only until January 1, 2019,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before January 1, 2019, deletes or extends that date.

32 SEC. 4. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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